HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No. 8410 OF 2006

Between:

1.Sirikoti Narayana Rao
and two others

… Petitioners

AND

A.P. Pollution Control Board,
Rep by its Member Secretary,
Paryavaran Bhavan, Hyderabad.
& others.

… Respondents

: ORDER :

Counsel for the petitioners : Sri K.S.Murthy

Counsel for respondent Nos.1& 3 : Shri S.V.Bhat.

Counsel for Respondent No.2 : Government Pleader for Revenue

Counsel for respondent No.4 : G.P.for Medical and Health.

Counsel for Respondent Nos.5 to 10 : Shri O.Manohar Reddy.

Dated: 22nd February, 2007

-

-
-

Per C.V.Nagarjuna Reddy, J

Sirikoti Narayana Rao who claims to be a member of the community " Kalushya Nivarana Sub-Committee" constituted by A.P.Pollution Control Board (for short 'APPCB') along with two others who are residents of C.Rayavaram village of East Godavari District filed this writ petition for writ of mandamus for declaring the inaction of respondents 1 to 4 in controlling the dust emanating from stone crushers run by respondents 5 to 10 as illegal and unconstitutional. The petitioners also sought for a consequential direction to respondents 1 to 4 to take necessary steps including closure of the crushers and to see that the medical expenses incurred are reimbursed as compensation to the residents of the colonies which are affected by running of stone crushers by respondents 5 to 10.

In the affidavit filed in support of the writ petition it is averred that on account of construction of Eleshwaram reservoir number of families were displaced and they were rehabilitated in C.Rayavaram colony apart from various other localities of Chaitanyapuram colony, Shantinagar Colony, Quaripeta, Rajamundry colony and Gollalameta; that stone crushers in dispute are situated near the said colonies; that these crushers are functioning without following any norms for several years. The petitioners further averred that as the managements of these stone crushers are unable to control the fine dust while operating

the stone crushers, it is spreading over the residential areas; in the year 1999 the Executive Officer of the Gram Panchayat addressed a letter to the officer concerned at Pollution Control Board, Rajamundry in which it was clearly stated that due to the functioning of these crushers at C.Rayavaram colony, Scheduled Caste people are suffering and copies of these letters were sent to the District Collector, Kakinada and Inspector of Factories, Kakinada. According to the petitioners, APPCB authorities had been making occasional visits and holding discussions and the petitioners learnt that the fine dust coming out of the crushers is causing Silicosis, affecting the whole respiratory system of the human body; the failing health of the people in the surrounding areas is making them to run to Doctors; A.M.G.Hospital conducted a free T.B. medical camp and prepared a list of T.B. patients after conducting a full fledged survey. In 1997 district level T.B. Control Officers, Civil Surgeon of the Community Health Centre, Eleshvaram conducted camps to identify the T.B.patients, X-rays were taken and reports finalized. The petitioners allege that the APPCB prescribed norms for the location of stone crushers and that the authorities of the APPCB and district administration have failed to stop the crushing units from functioning without following the fixed norms. They further allege that APPCB is not acting decisively in spite of making several representations and agitations for several years. It is also averred that even the letters sent by the APPCB to the stone crushers till 2004 show that the latter did not have the dust control equipment and that they are liable to pay for the health risks faced by the residents of the area. In spite of the same, the petitioners allege, there has been no change in the situation. The petitioners also allege that their right to life is directly affected warranting intervention of this Court.

On 29.6.2006 this Court directed the District Medical and Health Officer, Kakinada, East Godavari district (respondent No.4) to file an affidavit indicating therein the adverse impact on the health of the people due to the pollution, if any, caused by the operation of the stone crushers in the area. Respondent No.4 accordingly filed a counter affidavit wherein it was mentioned that respondents 6 to 10 were granted permission for establishment of stone crushers during the period 1975 to 1993 subject to the following conditions:

1. Bunkers should be constructed to deposit dust. Dust may be dispensed at regular intervals.
2. Greenbelt has to be developed within the radius of 50 meters with tall growing trees all round the proposed site.
3. Watering of stones before crushing should be arranged strictly.
4. Masks, caps, and Boots have to be supplied to the workers employed in factory.
5. Periodical Health Checkup should be done to the workers employed in factory.
6. Compound wall at a height of not less than 12 feet should be constructed all round the factory.
7. A screen with gunny bags at a height of 20 feet on western side of proposed site has to be arranged.

It is further mentioned in para-3 of the counter affidavit that if the stone crushers follow the aforementioned conditions the operation of stone crushers would not create any health hazards. As the power of inspection was withdrawn from the Medical and Health Department vide G.O.Ms.No.366 dated 20.6.1994 and G.O.Ms.No.384 dated 29.6.1984, the Medical and Health Officer discontinued the periodical

inspection since 1994. It is also mentioned that camps to identify the T.B. patients are being conducted at Eleshvaram Community Health Center since 1997 and that at present 7 nos., of T.B.cases were booked in quarry area under D.O.T. (directly observed treatment in short course) programme and Revised National T.B. control Programme for complete treatment at Eleshwaram Community Health Center. Out of 7 cases booked, 4 cases are of Pulmonary type (Cat I and II) and other three cases are extra-pulmonary type (Cat III).

On 17.7.2004 after perusal of the affidavits and the material on record, this Court appointed Sri P.S.Rajashekar and Sri V.V.N.Narsimham, advocates as Court Commissioners authorizing them to visit the site and make assessment of the pollution caused due to operation of the stone crushers and also the extent of green belt developed by the stone crushers within 50 meters of their radius. The Court Commissioners were also requested to get in touch with the people living in the vicinity to ascertain the impact of the stone crushers on their lives and submit a report to the Court within three weeks. The Court Commissioners after inspecting site filed a detailed report. The contents of the report revealed that the Court Commissioners visited the sites on 5.8.2006 accompanied by an Environmental Engineer from APPCB, Kakinada, Senior Environmental Scientist, Zonal Laboratory, APPCB, Vishakapatnam and Assistant Environmental Engineer, APPCB, Kakinada. It is mentioned in the Commissioners report that when they sought to carryout air ambient test they could not do so for two reasons; a) frequent power interruptions, and b) a group 50 people created trouble at the site of respondent No.9 demanding that raw-material shall not be wetted before it is sent for processing into the crusher resulting in creating hindrances in carrying air ambient test. It is observed in the

report that the Commissioners noticed that the raw material is wetted before being fed into the crusher and all the three places where dust is generated have been sufficiently closed by constructing bunkers/rooms. The Commissioners have observed this feature in all the stone crushing units.

With regard to green belt the report shows that respondents 6 to 8 have grown long eucalyptus trees surrounding the crushers while no such trees are grown by respondents 9 and 10. It was however observed by the Commissioners that respondents 6 to 10 have planted approximately 200 to 300 saplings on 4.8.2006 in their units within 50 meters radius in compliance with the directions of this Court given on 17.7.2006.

On the impact of the operations of the crushers on the health of the people in the locality, the Court Commissioners have recorded the statements of persons who have come on their own and also of the persons who are interviewed by them on a random basis. Their statements are also filed as annexures 9 and 11 to 20. In the category of voluntary statements the Court Commissioners recorded the statements of Sagarapu Appa Rao (annexure-9), Akula Ganga Raju (annexure-11), S.Venkateshwar Rao (annexure 12), Chandaka Satyanarayana (annexure-13) and S.Tirumalaiah (annexure-14). S.Appa Rao who is also petitioner No.3 in the writ petition stated that petitioner No.1 approached him in the month of December 2005 with a request to affix his signatures on certain papers, representing that there is dispute between one Rajender of 'Sujana' (a NGO) and Sri Anil of 'Gamana' (another NGO) regarding their areas of operation and that they have entered into a compromise. He has also stated that when he was asked to sign on the said compromise document as an elder of the locality he affixed his signature and that he has not filed

any court case. The Commissioners mentioned in the report that they asked the first petitioner, who was present at the time when petitioner No.3 was making the said statement, to identify him and affix his signature on the annexure-9 statement of S.Appa Rao. Accordingly the first petitioner signed on the said statement and that on the request of the Commissioners Sri M.Srinivasulu identified both the petitioners. Akula Ganga Raju who gave statement marked as annexure-11 claimed that he was the President of quarry Lorry Drivers Union and that there were no quarry operations for the last 15 days and that there was no raw material being supplied to the crushers. Sri S.Venkateshwar Rao in his statement marked as Annexure-12 stated that the residents of the entire mandal of Eleswaram are dependant on quarry/crushing operations and that they would be denied their livelihood if these operations are stopped. He has also stated that after the managements of the crushers took precautionary measures in the year 2005 air and noise pollution has got reduced to a great extent. He has also stated that certain individuals are indulging in blackmailing the managements to benefit financially. Chandaka Satyanarayana and Thirumalaiah gave similar statements (annexures-13 and 14) and they desire that the crushing operations be continued in the interest of thousands of families who are eking out their livelihood on the running of the stone crushers. Out of the persons whose statements were recorded by the Commissioners at random Smt.M.Marathamma inter alia stated that she had been working in the quarries from the age of 16 years and she along with her family members are living in a hut situated to the west of a stone crushing unit and that she is suffering from T.B., since three years for which she is taking treatment; the government granted house sites on 28.10.2004. She has further stated that she was suffering from T.B. even before she

shifted to the present place. She also stated that before coming to Eleshwaram she was working in Nagampally quarry in Gokavaram Mandal. Her statement is marked as Annexure-15. Smt.Chukka Laxmi, whose statement is marked as annexure-16 is also a quarry worker, residing in a hut located to the north of the stone crushing unit. She stated that she is suffering from fever since one year, but however she has no breathing problem. She further stated that she is affected by sound and dust pollution. Pilla Laxmi who is also a quarry worker stated that she is residing in the area for the last 20 years and that she has no hearing or breathing problems. She also stated that she does not suffer from air or dust pollution as the raw material is wetted before crushing. The hut of Smt.Laxmi is situated opposite to stone crushing unit of respondent No.10. Ch.Rajamani in her statement marked as annexure-18 stated that her family is residing in the area for the last ten years and that she is working in the quarry; she has no hearing or breathing problem though she is suffering from sound and noise pollution. She stated that drinking water is contaminated with dust. The statement of R.Chinna Nukaraju, marked as annexure-19, is also identical to that of annexure-18 given by Ch.Rajamani. Apart from the aforementioned persons' statements recorded by the Court Commissioner, on being led by one Anil Dayakar who is associated with NGO called "Gamana", the Court Commissioners examined Sri K.Devadas, Smt.A.Lova Kumari, M.Simhachalam and Smt.T.Rajamma residents of Shantinagar locality. Sri K.Devadas, in his statement marked as annexure-8, stated that he developed a huge bulge below his right ear since four years and that he is not suffering from any breathing problem. He further stated that he left the bulge untreated as he could not afford treatment. He declined to provide Xerox copies of certain diagnostic reports produced for perusal of the Commissioners.

The Commissioners observed in the report that the reports shown by K.Devadas do not contain any information that the bulge occurred due to noise or air pollution. Smt.A.Lova Kumari, M.Simhachalam and T.Rajamma informed the Commissioners that they were suffering from T.B. The Commissioners however observed that they failed to produce any medical evidence in support of their claim.

Separate counter affidavits on behalf of the respondents 5 to 10, the stone crushing units, have been filed. In his counter affidavit Sri K.V.V. Prasad Reddy, Managing Partner of the 5th respondent submitted that they have obtained approval from the District Medical and Health Officer, East Godavari, Director of Factories and Boilers, Director of Town and Country Planning, on the basis of which the Eleshwaram Grampanchayat gave approval for running the stone crusher through its resolution dated 25.8.1984. It is further averred that on the strength of the said approval, the crushing unit was established; in the year 1993 when complaints were given by certain persons that due to operation of stone crushing unit air pollution is caused the Collector and District Magistrate convened a meeting in which he directed that the units shall be operated only during day time and that APPCB shall take necessary action to control the pollution. In the year 1996 and 1998 new guidelines were issued by the APPCB. The 5th respondent complied with all the required conditions by constructing an elevated/closed dust storage bunker for the collection of dust, screen covered with M.S.sheet connected with blower, water sprinklers at dust generating point and raising green belt. It is also stated that a committee of the APPCB visited the respondents' factory on certain complaints and were satisfied after conducting ambient air quality test and other tests that they were complying with all the directions. While denying the allegations that the unit was causing

pollution, the 5th respondent reiterated that they are taking all pollution control measures as suggested by the APPCB and also by the National Productivity Council. All the other contesting respondents, namely respondents 6 to 10 filed separate counter affidavits which are more or less on the similar lines and therefore they need not be specifically adverted to. Suffice it to note that all of them have denied the allegation that their units are causing pollution, while reiterating that they are taking all the pollution control measures which are necessary to prevent both air and noise pollution.

Petitioner No.1 filed a reply affidavit wherein the contents of the counter affidavits of respondents 5 to 10 were generally denied apart from referring to and denying the allegations made by some of the persons whose statements were recorded by the Court Commissioners. The third petitioner, S.Appa Rao apart from giving the statement before the Court Commissioners filed an affidavit dated 23.9.2006 wherein he explained the circumstances in which he signed on the Vakalat filed in this writ petition. He sought to explain that as he was associated with 'Sujana' a NGO, to educate people about the pollution he agreed to file this writ petition only to see that some medical help and compensation are provided to the people in the locality apart from rehabilitation of child labour in the locality. He further stated in his affidavit that when asked by the Court Commissioners he told them that he never filed any case to launch prosecution against the owners of the mettle crushers and that he wanted justice to the affected persons.

During one of the hearings of the case Sri K.S.Murthy, learned counsel for the petitioners pointed out that as the Court Commissioners could not undertake air ambient test during their inspection it would be appropriate that the APPCB may be directed to

carryout the said test. Accordingly, this Court passed an order on 30.11.2006 wherein the APPCB was directed to submit report based on air ambient test carried out by the APPCB.

In compliance with the directions of this Court, Sri R.Laxminarayana, Environmental Engineer prepared a report dated 19.12.2006 and sent to the Member Secretary, APPCB, which was placed before this Court. The report shows that he conducted ambient air quality (AAQ) test on 13.12.2006 on all the stone crushers run by respondents 5 to 10 in the presence of petitioners 1 and 3. He has mentioned the values obtained in the AAQ test. It is apt to extract them as under:

R Nos.	Name and Address of the Stone Crusher	TSPM Value in Ug/M3 at a distance of 6 Mtrs from the source	Standard Value in Ug/M3 at a distance of 6 Mtrs from the source
R5	M/s.Sri Surya Chandra Stone Crusher, Yeleswaram	498.2	600
R7	M/s.Rama Krishna Stone Crusher, Yeleswaram	390.9	600
R8	M/s.Sri Laxmi Crushing Metal Suppliers, Yeleswaram	322.5	600
R9	M/s.Srinivasa Crusher Metal Company, Yeleswaram	445.6	600
R10	M/s.Sri Lalitha Stone Crusher, Yeleswaram	479.4	600

After submission of the said report by the APPCB the writ petition was set down for hearing.

Heard Sri K.S.Murthy learned counsel for the petitioners, Sri S.V.Bhat, learned counsel for respondents 1 and 3 and Sri O.Manohar Reddy, learned counsel for respondents 5 to 10.

Sri K.S.Murthy submitted that while the result of AAQ test qua the individual stone crushers shows that the air pollution is well within the prescribed parameters, it is necessary that the cumulative effect of the air pollution caused by all the stone crushers run by respondents 5 to 10 is required to be taken into consideration and that in such a case the air pollution caused by all the stone crushers together would exceed the prescribed standards. Sri Murthy further submitted that some of the stone crushers have not maintained proper green belt. He also submitted that some of the respondents have failed to construct wind protecting wall and compound wall. In this regard he had taken us to page-125 of the material papers which contains photographs of stone crusher run by respondent No.7. Sri Murthy also submitted that some of the units have not provided mettle roads. Referring to the list of alleged TB patients in the Eleshwaram quarry area certified by Medical Officer, AMG Free T.B. Medical Camp for quarry labourers and others numbering about 102, the learned counsel for the petitioners submitted that the running of stone crushers without observing proper pollution control measures is causing health hazards and that in public interest it is very much necessary that a team of medical experts is constituted by respondent Nos.2 and 4 and costs of treatment and other medical expenses be recovered from respondents 5 to 10 from time to time.

Sri S.V.Bhat, learned counsel for the APPCB submitted that the reports of the Court Commissioners and the Environmental Engineer, do not show that the operation of stone crusher by respondents 5 to 10 is in any manner causing pollution in the area. He further submitted that the APPCB is conducting periodical inspections and laying down stringent conditions ensuring their strict implementation. He referred to the letter dated 18.5.2005 of Sri R.Laxminarayana, Environmental

Engineer wherein he constituted a committee known as Kalushya Nivarana Sub-Committee with some of the residents in the locality including the first petitioner by giving necessary directions to the committee to oversee the compliance with all those conditions by the stone crushers. He also referred to the letter, dated 5.11.2005 addressed by the Environmental Engineer to the Kalushya Nivarana Sub- Committee giving necessary instructions to them to monitor the operations of the stone crushers.

Sri O.Manohar Reddy, learned counsel appearing for respondents 5 to 10 submitted that the writ petition is not filed in public interest but the same is nothing but a motivated attempt to make unlawful personal gain by the petitioners. He reiterated the contents of the counter affidavits and submitted that his clients have been complying with the directions being issued by the APPCB from time to time by taking up all the pollution control measures such as construction of elevated closed bunkers, erection of screen covered with M.S. sheet connected with blower, providing water sprinklers at dust generating point and raising green belt. He also submitted that in the year 2003, the National Productivity Council suggested dust-controlling measures for the control of dust from the stone crushers. According to the learned counsel, APPCB after being satisfied with all these measures issued consent for operations and its officials have been monitoring the operations of the units from time to time. The learned counsel has also relied upon the various photographs filed along with counter affidavits in support of his contentions that the required pollution control measures are taken and that the entire activity is well regulated.

We have carefully heard the arguments of the learned counsel appearing for the parties and perused the entire material on record.

The Court Commissioners, as has been already noted above, submitted a detailed report prepared by them after inspecting the stone crushers run by respondents 5 to 10, along with several photographs and the statements of some of the residents of the locality recorded by them under Annexure-9 and 11 to 20. From a perusal of the statements recorded by the Commissioners it is evident that none of the persons who gave the statements complain that they are suffering from T.B. While most of them stated that they have no hearing and breathing problems, the common complaint is that there was some noise pollution. It is significant to note that all these persons whose statements were recorded are residing in close proximity to the stone crushers and that obviously appears to be the reason for their complaint of noise. However, as already referred to in the foregoing Smt.A.Lova Kumari, M.Simhachalam and Smt.T.Rajamma whom the Court Commissioners met claimed that they were suffering with T.B., but they did not produce any evidence in support of their claim before the Court Commissioners. Though Sri Murthy filed Xerox copy of the list containing the names of 102 persons who are stated to be the residents of the quarry area Eleshwaram who are said to be the T.B. patients and have taken T.B. treatment at A.M.G. Free T.B. Medical Camp at Eleshwaram, no further documentary proof such as individual doctor certificates, medical prescriptions etc., have been filed to substantiate this allegation. Had there been such high number of patients suffering from T.B. there was no reason for the petitioners to produce at least a few of them before the Court Commissioners during their inspection to the locality. We are therefore not prepared to take the said list on its face value and hold that the residents of the locality where the stone crushers are situated are suffering from T.B.

Further from the AAQ test report dated 19.12.2006 prepared by

Environmental Engineer and submitted by the APPCB to this Court which clearly shows that air pollution levels are well within the prescribed limits and whose correctness is not disputed by the learned counsel for the petitioners, various photographs filed by the parties forming part of the record and communications of the officials of APPCB showing the periodical monitoring of the working of respondents 5 to 10, we are satisfied that the respondents 5 to 10 are running the stone crushers as per the guidelines prescribed by the APPCB and the air pollution caused by individual stone crushers are within the prescribed limits. However, Sri Murthy contended that air pollution levels have to be cumulatively considered and that on such consideration if the actual levels exceed the prescribed levels, the stone crushers are liable for closure. We are unable to accept this contention, because, each crusher being an independent unit, there is no reason to take the cumulative values to completely prevent operation of the stone crushers. However, at the same time, we cannot completely ignore the impact, the operation of all the stone crushers together creates on the health of the people living in the vicinity of these stone crushers, despite the best of the precautions taken by the respondents 5 to 10. We therefore, feel that it is very much necessary that a team of medical experts is constituted by respondents 2 and 4 to monitor the health conditions of the people living in the Eleshwaram quarry area, make periodical medical check ups and give appropriate treatment to them. On the principle “polluter pays”, respondents 5 to 10 shall bear all the medical expenses in this regard.

As regards the contention of Sri K.S.Murthy that respondents 5 to 10 have not considered wind breaking walls and laid mettle roads, the

learned counsel filed an internet downloaded copy containing the pollution control measures stipulated by Government of India through its E.P.A. notification vide G.S.R.742(E) dated 30.8.1990 and S.O.8(e) dated 31.12.1990. These measures include construction of wind breaking walls and laying of mettle roads in the premises. None of the contesting respondents claimed that they complied with these two conditions. It is therefore, necessary that respondents 5 to 10 shall construct the wind breaking walls and lay mettle roads in their respective premises. With regard to the maintenance of green belt, the Court Commissioners' report shows that respondents 5 to 10 have grown long eucalyptus trees while respondents 9 and 10 have not grown any such trees. It is however stated in the report that each of respondents 5 to 10 planted eucalyptus saplings of approximately numbering 200 to 300 in their premises. It is the obligation of these respondents to protect the saplings and maintain proper green belt.

Having regard to the aforementioned facts and circumstances of the case, while we decline to issue direction for closure of the stone crushers run by respondents 5 to 10, we deem it appropriate to dispose of the writ petition with the following directions:

a) Respondent No.2 in consultation with respondent No.4 shall constitute a team of adequate number of Doctors to visit the residential colonies, namely, Chaitanyapuram, Shantinagar, C.Rayavaram Colony, Quarypet, Rajahmundry Colony and Gollelametta, at least once in every quarter.

b) Respondent No.2 shall ensure that a proper schedule is fixed for the visit of the team of Doctors and their camp venue is fixed in each of these aforementioned colonies

with advance announcement of their visits in the locality.

c) Respondent Nos.2 and 4 shall provide to the team of doctors necessary amounts for the medical expenses and remuneration payable to the team of Doctors and recover these amounts by apportioning it in equal proportions among respondents 5 to 10.

d) Respondents 2 and 4 shall obtain reports from the team of doctors in respect of each of the visits made by it and also call for the details of the number of patients, the nature of the disease and the treatment given to the patients. These records shall be maintained and preserved by respondents 2 and 4.

e) Respondent No.1 (APPCB) shall within two weeks from today depute its engineer to the premises of respondents 5 to 10 for inspection and within one week thereafter it shall intimate to the respondents 5 to 10 the specifications and details of the wind breaking wall and mettle road to be constructed by respondents 5 to 10.

f) Within four weeks from the date of receipt of such intimation by the respondent No.1, respondents 5 to 10 shall complete construction of wind breaking walls and mettle roads.

g) Respondents 5 to 10 shall maintain green belt to the satisfaction of respondent No.1.

In the event of failure of respondents 5 to 10 in complying with any of the conditions stipulated in this order, the respondent No.1 shall take appropriate action under the provisions of Air (Prevention and Control of Pollution) Act 1981.

C.V.NAGARJUNA REDDY,J

G.S.SINGHVI, CJ

Dt: 22.02.2007
mdaa

L.R.Copy to be marked.